Case 5:21-cv-01298 Document 1-1 Filed 12/31/21 Page 1 of 16

FILED C2021-1936B 12/1/2021 5:04 PM Heather N. Kellar Comal County District Clerk

CAUSE NO. C2021-1936B

District Clerk
Accepted By:
Aubrey Knew

KRYSTAN MOHLENHOFF, INDIVIDUALLY AND AS NEXT FRIEND OF R.M., A MINOR,

IN THE DISTRICT COURT

I FRIEND OF R.M., A MINO

Plaintiff

V.

207TH JUDICIAL DISTRICT

HOBBY LOBBY STORES, INC.

§ §

Defendant

COMAL COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Krystan Mohlenhoff, Individually and As Next Friend of R.M., A Minor, Plaintiff, files this her Original Petition complaining of Defendant, Hobby Lobby Stores, Inc., ("Defendant").

I. DISCOVERY

1. Plaintiff intends to conduct discovery in this suit under Level Three, pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, and will seek an order, agreed or otherwise, to this effect.

II. PARTIES

- 2. Plaintiff, Krystan Mohlenhoff, is a natural person and at all times relevant to this cause of action has been and continues to be a resident of Seguin, Guadalupe County, Texas.
- 3. Defendant, Hobby Lobby Stores, Inc., (Hobby Lobby), is a foreign corporation which routinely does business in the State of Texas. Hobby Lobby Stores, Inc., may be served with citation by serving its registered agent, Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company, 211 E. 7th Street, Ste. 620, Austin, Texas, 78701.

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III. <u>VENUE</u>

- 4. The Court has jurisdiction over this case because the subject matter and monetary amount sought are within the Court's jurisdiction pursuant to applicable Texas Law.
- 5. Venue is proper in Comal County, Texas, pursuant to Tex. CIV. PRAC. & REM. CODE, § 15.002 in that all or substantially all of the events or acts or omissions giving rise to the claim occurred in Comal County, Texas.

IV. FACTS

- 6. On December 16, 2020, Plaintiff and R.M., her 4-year-old daughter, were shopping at the Hobby Lobby Store located at 360 Creekside Way, New Braunfels, Texas, 78130.
- 7. The Hobby Lobby store (the premises) where Plaintiff was injured was owned by, managed by, and subject to the possession and control of Defendant Hobby Lobby at the time of the incident.
- 8. As Plaintiff was stopped in an aisle, multiple unsecured heavy wooden sign and/or pictures toppled over from a shelf behind her and struck Plaintiff and R.M., causing severe and debilitating injuries.
- 9. Due to Defendant's negligence, Plaintiff and R.M. suffered severe and debilitating injuries.

V. CAUSES OF ACTION

10. Plaintiff contends she and R.M. committed no negligent acts or omissions that contributed to their injuries.

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| Section of Rules HEATHER N. KELLAR COMAL COUNTY DISTRICT CLERK

A. Premises Liability:

11. At all times relevant hereto, Defendant was the owner, manager, and/or operator

of the premises, and had control over the premises. Plaintiff and R.M. had the status of invitees

on Defendant's premises.

12. Defendant owed Plaintiff and R.M. a duty to use ordinary care to keep the

premises in a reasonably safe condition, including the duty to protect invitees from unreasonable

risks of harm or to warn them of the risks so they could avoid them. Defendant also had a duty to

inspect the premises to discover defects and was charged with constructive knowledge of any

premises defects or other dangerous conditions that a reasonably careful inspection would reveal.

Specifically, Defendant had a duty to properly maintain the subject area so that items stored on

shelving above invitees' heads would not fall onto invitees.

13. The unreasonably dangerous condition created by improperly secured and stacked

items on shelving posed an unreasonable risk of harm to Plaintiff and R.M., which proximately

caused Plaintiff's and R.M.'s injuries.

14. Defendant breached its duties to Plaintiff and R.M. by failing to make the

premises safe and by failing to give adequate warnings to alert invitees or warn them of the

dangers associated with the items stored on shelving overhead.

Negligence

15. Further, Defendant had a duty to exercise the degree of care that a reasonably

careful business owner, manager and operator, would use to avoid harm to others under

circumstances similar to those described herein. A reasonably careful business owner, manager

and operator would have maintained and inspected the designated area so items did not fall onto

invitees from store shelving.

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HEATHER N. KELLAR COMAL COUNTY DISTRICT CLERK

Defendant breached its duty of ordinary care by allowing items to fall from store 16. shelving, causing a dangerous condition.

B. Proximate Cause

17. Defendant's acts and omissions, breaches of duty, and negligence, as described above, were a direct and proximate cause of the damages Plaintiff has sustained, which are far in excess of the minimum jurisdictional limits of this Court.

VI. **DAMAGES**

- 18. As a direct and proximate result of Defendant's acts and omissions, breaches of duty, and negligence, Plaintiff suffered severe personal injuries, pain, suffering, mental anguish, disability, impairment, and disfigurement, and incurred reasonable and necessary medical expenses for the care and relief of her injuries. For a long time to come, if not for the rest of her life, Plaintiff will continue to suffer physical injuries, physical impairment, disfigurement, pain and suffering, and mental anguish. Additionally, as a result of the incident, Plaintiff will incur reasonable and necessary medical expenses in the future.
- As a direct and proximate result of Defendant's acts and omissions, breaches of 19. duty, and negligence, R.M. suffered severe personal injuries, pain, suffering, mental anguish, and impairment and incurred reasonable and necessary medical expenses for the care and relief of her injuries. For a long time to come, if not for the rest of her life, R.M. will continue to suffer physical injuries, physical impairment, pain and suffering, and mental anguish. Additionally, as a result of the incident, Plaintiff will incur reasonable and necessary medical expenses in the future.
- 19. Plaintiff now sues for all of these damages in an amount that is within jurisdictional limits of this Court. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff asserts

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that she is seeking monetary relief over \$1,000,000.00.

20. Plaintiff is entitled to recover prejudgment and post judgment interest as allowed by law.

VII.

CONDITIONS PRECEDENT

21. All conditions precedent have been performed or have occurred to support the Plaintiff's pleadings and causes of action.

VIII. REQUEST FOR JURY TRIAL

22. Plaintiff respectfully requests a trial by jury and has paid the jury fee.

PRAYER

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer herein and that on final trial, Plaintiff has judgment against Defendant for:

- 1. All medical expenses in the past and future;
- 2. Mental anguish in the past and future;
- 3. Physical pain in the past and future;
- 4. Physical impairment in the past and future;
- 5. Disfigurement in the past and future;
- 6. Prejudgment and post judgment interest as allowed by law;
- 7. Costs of suit; and
- 8. Such other and further relief to which Plaintiff may be justly entitled.

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| JULIA | JULIA |
HEATHER N. KELLAR COMAL COUNTY DISTRICT CLERK

Respectfully submitted,

WYATT LAW FIRM, PLLC

Oakwell Farms Business Center 21 Lynn Batts Lane, Suite 10 San Antonio, Texas 78218

Tel: 210-340-5550 Fax: 210-340-5581

E-service: e-serve@wyattlawfirm.com

By: /s/ Paula A. Wyatt

Paula A. Wyatt

Texas Bar No. 10541400

Gavin McInnis

Texas Bar No. 13679800

Thomas Kocurek

Texas Bar No. 24027421

Louis Durbin

Texas Bar No. 24078448

George Deutsch

Texas Bar No. 24087413

ATTORNEYS FOR PLAINTIFF

STATE OF TEXAS
COUNTY OF COMAL
I certify this to be a true and correct
copy of the record FILED & RECORDED
in the Official Court records of District
Court on this date and time stamped thereon.

Heather N. Kellar

Comal County District Clerk

CERTIFIED TO BE A TRUE AND CORRECT COPY.



FILED C2021-1936B 12/1/2021 5:04 PM Heather N. Kellar Comal County District Clerk Accepted By: Aubrey Knew

HEATHER N. KELLAR

	C2024 4026D		
CAUSE NO.:	C2021-1936B	DATE:	
CAUBLITO		DATE.	_

HEATHER N. KELLAR COMAL COUNTY DISTRICT CLERK REQUEST FOR PROCESS Request the following process (please check all that apply): **X** Citation _ Notice _ Precept with Hearing _ Precept without Hearing Temporary Restraining Order Temporary Protective Order Final Protective Order Capias/Warrant Writ of Attachment Writ of Garnishment Writ of Sequestration Other: Person(s) Being Served: 1. Name: Hobby Lobby Stores, Inc. Registered Agent/By Serving: Corporation Service Company d/b/a CSC - Lawyers Incorporating Service Company Address: 211 E. 7th Street, Suite 620 Austin, Texas 78701 Service Type (select one): X Private Process ☐ Sheriff (IN COUNTY) _ Certified Mail Sheriff (OUT OF COUNTY) Secretary of State Publication Posting/Courthouse Door Emailed Back to Requester TO BE: Picked-Up ☐ Mailed Back to Requester 2. Name: Registered Agent/By Serving: Address: ☐ Sheriff (IN COUNTY) **Private Process** Service Type (select one): Certified Mail Posting/Courthouse Door ☐ Sheriff (OUT OF COUNTY) ☐ Secretary of State ☐ Publication Picked-Up Mailed Back to Requester Emailed Back to Requester TO BE: 3. Name: Registered Agent/By Serving: Address: ☐ Sheriff (IN COUNTY) Service Type (select one): Private Process Certified Mail Posting/Courthouse Door Sheriff (OUT OF COUNTY) Secretary of State Publication Mailed Back to Requester TO BE: _ Picked-Up **Emailed Back to Requester** 4. Name: Registered Agent/By Serving: Address: Service Type (select one): **Private Process** ☐ Sheriff (IN COUNTY) Certified Mail Sheriff (OUT OF COUNTY) Secretary of State _ Publication Posting/Courthouse Door Picked-Up ☐ Mailed Back to Requester Emailed Back to Requester Title of Document(s) to be attached to process: Name of Person Requesting Service: Paula Wyatt Plana OF 710-340-5550 E-Mail: e-serve@wyattlawfirm.com Adotens: Y OFLYNIN Batts Lane, Suite 10 San Antonio, Texas 78218 I certify this to be a true and correct Appointed? copy of the record FILED & RECORDED ☐ Pauper's Affidavit? CERTIFIED TO BE ATRUE AND in the Official Court records of District Court on this date and time stamped CORRECT COPY. thereon.

Heather N. Kellar





TO: HOBBY LOBBY STORES INC

upon whom process of service may be had by serving

CORPORATION SERVICE COMPANY D/B/A CSC - LAWYERS INCORPORATING SERVICE COMPANY 211 E. 7TH STREET, SUITE 620 AUSTIN, TEXAS 78701

Defendant, Greeting:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org".

Said Plaintiff's ORIGINAL Petition was filed in said Court, on 1st day of December, 2021A.D. in this cause numbered C2021-1936B on the docket of said 207th District Court, and styled,

KRYSTAN MOHLENHOFF VS. HOBBY LOBBY STORES INC

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's ORIGINAL Petition, accompanying this citation, and made a part hereof.

ATTORNEY FOR PLAINTIFF:

WYATT LAW FIRM, PLLC

PAULA A. WYATT

21 LYNN BATTS LANE, SUITE 10 SAN ANTONIO, TEXAS 78218

The officer executing this writ shall forthwith serve the same according to requirements of law, and the mandates hereof, and make due return as the law directs.

Issued and given under my hand and the seal of said court at New Braunfels, Texas, this the 2nd day of December, 2021 A.D.

HEATHER N. KELLAR
DISTRICT CLERK
COMAL COUNTY, TEXAS
199 MAIN PLAZA, SUITE 2063
NEW BRAUNFELS, TEXAS 78130

Sarah Fuentez

CERTIFIED TO BE A TRUE AND CORRECT COPY.

DEPUTY

HEATHER N. KELLAR
COMAL COUNTY
DISTRICT CLERK
PAGE
OF

RETURN OF SERVICE CAUSE NO: C2021-1936B

KRYSTAN MOHLENHOFF VS. HOBBY LOBBY STORES INC

Executed when copy is o		os delivered to del	fendant	
on the day of				
				, Officer
		,	, Co	unty, Texas
		В	y:	, Deputy
		OFFICER'S RE	TURN	
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			in named defendants, in person, a tru	
Citation, with the date of petition, at the followin			r with the accompanying copy of the	plaintiff's
NAME	DATE	TIME	PLACE, COURSE & DISTANCE FROM	COURTHOUSE
And not executed as to	the defendant			
and the cause or failure				
and the information rec	ceived as to the wher	eabouts of said d	efendant(s) being:	
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			, County	, Texas
			, Deputy , Affi	
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			ONSTABLE, OR CLERK OF THE COUR	
			n who serves, or attempts to serve, a If the return is signed by a person oth	
			under penalty of perjury and contain	
statement:				
" My name is	, r	ny date of birth is	, and my address i	is
(FIRST,	Middle, Last)			
(Street, City, Zip)				
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Declarant/Author	ized Process Server		(ID # & expiration of certificatio	n)
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STATE OF TEXA	AS	ch witness my har	nd and seal of office.	
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HE HE	eather N. Kellar	Clork /		HEATHER N. KELLAR
Co	eather N. Kellar omal County District	prente à		DISTRICT CLERK PAGE OF
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Case 5:21-cv-01298 Document 1-1 Filed 12/31/21 Page 10 of 16

*	CAUSE NO. C2021-1936B	FILED C2021-1936B 12/17/2021 6:36 PM Heather N. Kellar Comal County District Clerk Accepted By:
KRYSTAN MOHLENHOFF	5	Sarah Fuentez IN THE DISTRICT COURT
	§	
Plaintiff,	§	
VS.	5	207TH JUDICIAL DISTRICT
	5	
HOBBY LOBBY STORES INC	§	
Defendant.	§	COMAL COUNTY, TEXAS

AFFIDAVIT OF SERVICE

On this day personally appeared Marivel Maldonado who, being by me duly sworn, deposed and said:

"The following came to hand on Dec 2, 2021, 11:28 am,

CIVIL CITATION, PLAINTIFF'S ORIGINAL PETITION,

and was executed at 211 E 7TH ST SUITE 620, AUSTIN, TX 78701-3201 within the county of TRAVIS at 02:55 PM on Fri, Dec 03 2021, by delivering a true copy to the within named

HOBBY LOBBY STORES INC. BY SERVING CORPORATION SERVICE COMPANY D/B/A CSC - LAWYERS INCORPORATING SERVICE COMPANY

in person, having first endorsed the date of delivery on same.

I am a person over eighteen (18) years of age and I am competent to make this affidavit. I am a resident of the State of Texas. I am familiar with the Texas Rules of Civil Procedure as they apply to service of Process. I am not a party to this suit nor related or affiliated with any herein, and have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I have personal knowledge of the facts stated herein and they are true and correct."

Marivel Maldonado

Certification Number: PSC# 19321 Certification Expiration: 01/31/2023

BEFORE ME, a Notary Public, on this day personally appeared Marivel Maldonado, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are within his or her personal knowledge and are true and correct.

SUBSCRIBED AND SWORN TO ME ON 12/3/2021

MYRANDA MARIN Notary Public, State of Texas Comm. Expires 01-24-2025 Notary ID 130976185 15051

Notary I

lotary Public State of Texas

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HEATHER N. KELLAR
COMAL COUNTY
DISTRICT CLERK
PAGE
OF

RETURN OF SERVICE CAUSE NO: C2021-1936B

KRYSTAN MOHLENHOFF VS. HOBBY LOBBY STORES INC

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	and the information received a	as to the whereab	outs of said d	efendant(s) being:	
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				, County, Texa	15
			By:	, Deputy , Affiant	
				ONSTABLE, OR CLERK OF THE COURT, who serves, or attempts to serve, a citation	on shall
	sign the return. The signature	is not required to	be verified.	If the return is signed by a person other th	an a sheriff,
	statement.			under penalty of perjury and contain the f	ollowing
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7 44	(Street, City, Zip)	24/187502		JONES, 1 X 1821 1	
	I DECLARE UNDER PENALTY OF				701
	Executed in Iran Co	ounty, State of La	CLAS on the	3 day of Deer In Ser	02.3
	Declarant/Authorized Pr			(ID # & expiration of certification)	
	SUBSCRIBED AND SWORN TO December 2021			ivel Maldonado this the 3 dans and seal of office,	_day of
	DECEMBER 2021	to certify which w	Airtiess till Hai	Mule of	
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			Heath	per N. Kellar	COMAL COUNTY DISTRICT CLERE
			Com	County District Clerk	PAGE OF 2

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Candice Garza on behalf of Paula Wyatt Bar No. 10541400 cgarza@wyattlawfirm.com Envelope ID: 60153284 Status as of 12/20/2021 9:09 AM CST

Associated Case Party: Krystan Mohlenhoff

Name	BarNumber	Email	TimestampSubmitted	Status
Paula Wyatt		e-serve@wyattlawfirm.com	12/17/2021 6:36:51 PM	SENT
Candice Garza		cgarza@wyattlawfirm.com	12/17/2021 6:36:51 PM	SENT

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HEATHER N. KELLAR COMAL COUNTY DISTRICT CLERK

Case 5:21-cv-01298 Document 1-1 Filed 12/31/21 Page 13 of 16

FILED C2021-1936B 12/22/2021 4:19 PM Heather N. Kellar Comal County District Clerk Accepted By: Sarah Fuentez

CAUSE NO. C2021-1936B

KRYSTAN MOHLENHOFF, INDIVIDUALLY AND AS NEXT	§ 8	IN THE DISTRICT COURT
FRIEND OF R.M., A MINOR,	§	
	§	
Plaintiffs,	§	
	§	COMAL COUNTY, TEXAS
v.	§	
	§	
HOBBY LOBBY STORES, INC.,	§	
	§	
Defendant.	§	$116^{ m th}$ JUDICIAL DISTRICT

DEFENDANT HOBBY LOBBY STORES, INC.'S ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION

Defendant, **HOBBY LOBBY STORES**, **INC**., files its Original Answer to Plaintiff's Original Petition as follows:

I. GENERAL DENIAL

1. Defendant denies each and every, all and singular, the material allegations contained within Plaintiff's Petition and demands strict proof thereof.

II. JURY DEMAND

2. In accordance with Rule 216 of the Texas Rules of Civil Procedure, Defendant hereby demands a trial by jury and thereby enders the applicable jury fee with its Answer.

MOHLENHOFF / DEFENDANT HOBBY LOBBY STORES, INC.'S ORIGINAL ANSWER AND DEMAND FOR JURY TRIAL DOC# 7925448 / 79533.00029

CERTIFIED TO BE A TRUE AND $\ \mathbb{P} \land G \models \ | \ 1$ CORRECT COPY.

III. PRAYER FOR RELIEF

3. Defendant, HOBBY LOBBY STORES, INC. prays that Plaintiff take nothing by this lawsuit; that Defendant go hence with its costs without delay; and for such other and further relief, both general and special, at law and in equity, to which Defendants may show themselves justly entitled.

Respectfully submitted,

MAYER LLP

750 North Saint Paul Street, Suite 700 Dallas, Texas 75201 214.349.6900 / Fax 214.379.6939

By: Isl Robin R. Gant

Zach T. Mayer State Bar No. 24013118

E-Mail: zmayer@mayerllp.com

Robin R. Gant

State Bar No. 24069754

E-Mail: rgant@mayerllp.com

Dwayne I. Lewis

State Bar No. 24097996

E-Mail: dlewis@mayerllp.com

ATTORNEYS FOR DEFENDANT HOBBY LOBBY STORES, INC.

MOHLENHOFF / DEFENDANT HOBBY LOBBY STORES, INC.'S ORIGINAL ANSWER AND DEMAND FOR JURY TRIAL DOC# 7925448 / 79533.00029

CERTIFIED TO BE A TRUE AND $\ \mathbb{P} \ \mathrm{A} \ \mathrm{G} \ \mathbb{E} + 2$ CORRECT COPY.

CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of December 2021, a true and correct copy of the foregoing has been forwarded to all counsel of record as follows:

Paula A. Wyatt Gavin McInnis Thomas Kocurek Louis Durbin George Deutsch WYATT LAW FIRM, PLLC Oakwell Farms Business Center 21 Lynn Batts Lane, Suite 10 San Antonio, Texas 78218

□E-MAIL:

□HAND DELIVERY

□ FACSIMILE

□OVERNIGHT MAIL

□REGULAR, FIRST CLASS MAIL

⊠E-FILE AND SERVE

□E-SERVICE ONLY

□CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Counsel for Plaintiffs

181 Robin R. Gant

Robin R. Gant

STATE OF TEXAS

COUNTY OF COMAL

I certify this to be a true and correct
copy of the record FILED & RECORDED in the Official Court records of District Court on this date and time stamped

thereon.

MOHLENHOFF / DEFENDANT HOBBY LOBBY STORES, INC.'S ORIGINAL ANSWER AND DEMAND FOR JURY TRIAL Doc# 7925448 / 79533.00029

CERTIFIED TO BE A TRUE AND ${
m PAGE} \ 13$ CORRECT COPY.

Automated Certificate of eService

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Kristy Fisher on behalf of Robin Gant Bar No. 24069754 kfisher@mayerllp.com Envelope ID: 60303456 Status as of 12/27/2021 12:21 PM CST

Associated Case Party: Krystan Mohlenhoff

Name	BarNumber	Email	TimestampSubmitted	Status
Paula Wyatt		e-serve@wyattlawfirm.com	12/27/2021 9:42:43 AM	SENT
Candice Garza		cgarza@wyattlawfirm.com	12/27/2021 9:42:43 AM	SENT

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HEATHER N. KELLAR
COMAL COUNTY
DISTRICT CLERK
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OF